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[Fuchko & Yunker v. Georgia Power Co.](#), 89-ERA-9 (Sec'y Feb. 22, 1994)

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DATE: February 22, 1994
CASE NO. 89-ERA-9 & 10

IN THE MATTER OF

JOHN M. FUCHKO,

and

GARY A. YUNKER,

COMPLAINANTS,

v.

GEORGIA POWER COMPANY

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER OF REMAND

The Administrative Law Judge (ALJ) submitted a [recommended] Order Granting Stipulation of Dismissal with Prejudice to the Secretary in these cases arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988), which was based on "a full settlement" of these matters. In accordance with established procedure in ERA cases where dismissal is sought on the basis of a settlement, the Secretary issued an Order to Submit Settlement Agreement giving the parties 30 days to submit a copy of the settlement for review.

Rather than submitting a copy of the settlement, the parties jointly moved for remand of these matters to the ALJ and for a protective order. The parties proposed that on remand the ALJ would review the settlement *in camera*, submit a recommended decision to the Secretary on whether the agreement should be approved, and return the agreement to the parties. Any documents

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in the record relating to the settlement would be covered by the requested protective order and access to them would be restricted. Joint Motion for Remand and Protective Order at 3-4.

The joint motion is DENIED. Administrative economy would not be served by remanding these matters to the ALJ for a recommended decision on whether the settlement is acceptable when no fact finding is required and the settlement can be submitted to and reviewed by the Secretary. Even if these matters were remanded for that purpose, it would be improper under the regulations for the ALJ to review the settlement and return it to the parties. An ALJ's recommended decision under the ERA must be forwarded to the Secretary "together with the record," 29 C.F.R. § 24.6(a) (1993), and "[a]ll exhibits and other pertinent documents or records . . . shall be incorporated into the record." 29 C.F.R. § 24.5(e) (2).

In addition, it is well settled that all documents in the record in an ERA case are government records subject to disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b) (1988), and that motions to seal the record or restrict access to any part of it will be denied. *Corder v. Bechtel Energy Corp.* Case No. 88-ERA-9, Secy. Order Feb. 9, 1994, slip op. at 4-5; *DeBose v. Carolina Power and Light Co.*, Case No. 92-ERA-14, Sec'y. Ord. Feb. 7, 1994, slip op. at 2-3 and cases discussed therein.

Finally, I cannot accept the ALJ's recommendation without reviewing a copy of the settlement on which it was based and therefore I reject the ALJ's recommendation.

Accordingly, these matters are REMANDED to the ALJ for further proceedings consistent with this order.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.